

## Office of Personnel Management

## § 304.106

(b) The head of an agency, or his or her designee, shall consider the following factors in setting the initial rate of basic pay for an expert or consultant:

(1) The level and difficulty of the work to be performed;

(2) The qualifications of the expert or consultant;

(3) The pay rates of comparable individuals performing similar work in Federal or non-Federal sectors; and

(4) The availability of qualified candidates.

(c) An expert or consultant appointed under 5 U.S.C. 3109 may be employed without pay, provided the individual agrees in advance in writing to waive any claim for compensation for those services.

### § 304.105 Daily and biweekly basic pay limitations.

(a) Unless specifically authorized by an appropriation or other statute, agencies subject to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, may not pay for any 1 day an aggregate amount of pay (including basic pay, locality pay under subpart F of part 531 of this chapter, and premium pay under subpart A of part 550 of this chapter) that exceeds the daily equivalent of the highest rate payable under 5 U.S.C. 5332—that is, the daily rate for GS-15, step 10, under the General Schedule (excluding locality pay or any other additional pay). The daily rate is computed by dividing the annual GS-15, step 10, rate by 2,087 hours to find the hourly rate of pay and by multiplying the hourly rate of pay by 8 hours.

(b) Unless specifically authorized by an appropriation or other statute, an expert or consultant shall not be paid for any biweekly pay period an aggregate amount of pay (including basic pay, locality pay under subpart F of part 531 of this chapter, and premium pay under subpart A of part 550 of this chapter) in excess of the biweekly rate of pay for GS-15, step 10, under the General Schedule (excluding locality pay or any other additional pay). The biweekly rate is computed by dividing the annual GS-15, step 10, rate by 2,087 hours to find the hourly rate of pay and

by multiplying the hourly rate of pay by 80 hours.

### § 304.106 Pay and leave administration.

(a) The employing agency has the authority to adjust the pay of experts and consultants after initial appointment and to establish appropriate policies governing the amount and timing of any such adjustments, subject to the limitations of § 304.105. In addition to the factors listed in § 304.104(b), the agency may consider factors such as job performance, contributions to agency mission, and the general pay increases granted to other Federal employees. Experts and consultants are not entitled to receive automatic adjustments in their rates of basic pay at the time of general pay increases under 5 U.S.C. 5303 unless specifically provided for in the official appointing document. In the absence of such automatic entitlement, any pay adjustments are at the agency's discretion.

(b) Experts and consultants paid on a daily rate basis are not entitled to overtime pay under section 5542 of title 5, United States Code. Otherwise, experts and consultants qualify for premium pay under subchapter V of chapter 55 of title 5, United States Code, if they meet the applicable eligibility requirements (including the requirement that an employee have a regularly scheduled tour of duty, where applicable).

(c) Experts and consultants may be entitled to overtime pay under the Fair Labor Standards Act if they are non-exempt under OPM regulations implementing that Act for Federal employees. (See 5 CFR part 551).

(d) An expert or consultant may be paid for service on an intermittent basis in more than one expert or consultant position, provided the pay is not received for the same period of time (5 U.S.C. 5533(d)(1)).

(e) Experts and consultants are subject to the provisions of 5 U.S.C. 8344 and 8468 on reduction of basic pay by the amount of annuity received.

(f) Experts and consultants are subject to the provisions of 5 U.S.C. 5532 on reduction of retired military pay.

(g) Experts and consultants with a regularly scheduled tour of duty (i.e.,

## § 304.107

not intermittent) are entitled to sick and annual leave in accordance with chapter 63 of title 5, United States Code, and to pay for any holiday occurring on a workday on which they perform no work, provided that workday is part of the basic workweek. Those employed on an intermittent basis do not earn leave and are not entitled to paid holidays.

## § 304.107 Reports.

As required by 5 U.S.C. 3109(e), each agency shall report to the Office of Personnel Management on an annual basis:

(a) The number of days the agency employed each paid expert or consultant; and

(b) The total amount the agency paid each expert or consultant so employed. (Do not include payments for travel and related expenses.)

## § 304.108 Compliance.

(a) Each agency using 5 U.S.C. 3109 must establish and maintain a system of controls and oversight necessary to assure compliance with 5 U.S.C. 3109 and these regulations. The system must include—

(1) Appropriate training and information procedures to ensure that officials and employees using the authority understand the statutory and regulatory requirements; and

(2) Appropriate provision for review of expert and consultant appointments.

(b) OPM will, as necessary—

(1) Review agency employment of experts and consultants and agency controls and oversight to determine compliance; and

(2) Issue instructions and guidance to agencies on employing experts and consultants and on reporting procedures.

## PART 305 [RESERVED]

## PART 307—VETERANS READJUSTMENT APPOINTMENTS

Sec.

307.101 Definitions.

307.102 Coverage and general responsibilities.

307.103 Appointing authority.

307.104 Appeal rights.

## 5 CFR Ch. I (1–1–03 Edition)

AUTHORITY: 5 U.S.C. 3301, 3302; E.O. 11521, 3 CFR, 1970 Comp., p. 912; 38 U.S.C. 4214.

SOURCE: 58 FR 12145, Mar. 3, 1993, unless otherwise noted.

## § 307.101 Definitions.

In this part,

(a) The term *veteran* has the meaning given in section 4211 (2)(A), (3) and (4) of title 38, United States Code, as follows:

(1) *Veteran of the Vietnam era* means an eligible veteran any part of whose active military, naval, or air service was during the Vietnam era.

(2) *Disabled veteran* means:

(i) A veteran who is entitled to compensation (or who, but for the receipt of military retired pay, would be entitled to compensation) under laws administered by the Department of Veterans Affairs; or

(ii) A person who was discharged or released from active duty because of a service-connected disability.

(3) *Eligible veteran* means a person who:

(i) Served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge; or

(ii) Was discharged or released from active duty because of a service-connected disability; or

(iii) As a member of a reserve component under an order to active duty pursuant to section 672(a), (d), or (g), 673, or 673b of title 10 of the United States Code, served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from such duty with other than a dishonorable discharge.

(b) *Post-Vietnam-era veteran* means an eligible veteran who first became a member of the Armed Forces or first entered on active duty as a member of the Armed Forces after May 7, 1975.

(c) *Vietnam era* means the period beginning August 5, 1964 and ending May 7, 1975.

(d) *Veterans readjustment appointment (VRA)* is an excepted appointment made after April 8, 1970, under this part, to a position otherwise in the competitive service of eligible veterans of the Vietnam era and the post-Vietnam era.